IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF AUGUST
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

WRIT PETITION NOs.11824 OF 1995
AND 16188 OF 1996

WRIT PETITION No.11824 OF 1995

Between:

Kunjam Ramannadora.

..... PETITIONER

AND

Turam Nagaratnam and others.

....RESPONDENTS

WRIT PETITION No.16188 OF 1996

Between:

Turram Nagarathnam.

..... PETITIONER

AND

The Commissioner of Survey, Settlement
And Land Records, Govt. of A.P. Hyderabad,
and others.

....RESPONDENTS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR

WRIT PETITION NOs.11824 OF 1995
AND 16188 OF 1996

C O M M O N O R D E R

These two writ petitions are inter-connected and arise out of the proceedings of the 2nd respondent – Commissioner, Survey, Settlements and Land Records, A.P. Hyderabad, dated 27.12.1994. For the sake of convenience, the parties are referred as arrayed in W.P.No.11824 of 1995.

The facts leading to filing of these two writ petitions are as follows:

The petitioner and the 1st respondent admittedly belong to the community Scheduled Tribes. Both of them assert rights over an extent of Ac.28-00 gts of land covered by Sy.Nos.8 and 9 of Damanapalli village of erstwhile Rampachodavaram Taluk, now part of the Devipatnam Mandal of East Godavari District. Admittedly, the said land is located in a Scheduled Area of the State of Andhra Pradesh, which is governed by the provisions of the Schedule-V and the Regulations made thereunder. The case of the petitioner is that he and his father have been in possession of the above-mentioned property and the same was mortgaged to one Tataiah, who is not a party to either of these two writ petitions. It is not in dispute that the said mortgage is an oral mortgage without any documentary proof, and according to the petitioner the mortgage is for a period of 99 years for a consolidated amount of Rs.1,200/- and pursuant to the mortgage, the possession of the property was handed over to the said Tataiah in the year 1952. According to

the petitioner, the said Tataiah is a non-tribal. It is the further case of the petitioner that according to Section-4 of the Agency Tracts Interest and Land Transfer Act, 1917, which applies to the land in question at the time of entering into the alleged mortgage, any transfer of immovable property by a member of a hill tribe shall be absolutely null and void unless it is made in favour of another member of a hill tribe, or with the previous consent in writing of the Agent to the Government or of any other prescribed officer. The petitioner's case is that the said Tataiah is neither a hill tribe nor is there any written consent in writing of the Agent or any other Officer, and therefore, the above-mentioned oral mortgage in favour of Tataiah itself is void and consequentially the possession delivered to Tataiah is an unlawful possession.

These questions requires an examination and shall be examined in a little later. The land in question is admittedly a part of Mutta called as Velagapalli Mutta, which stood abolished by virtue of the Andhra Pradesh Muttas (Abolition and Conversion into Ryotwari) Regulation, 1969 (Regulation No.2 of 1969). The said Regulation came into force with effect from 4th October, 1969.

Under Section-2 of the said Regulation, the expression 'notified date' is defined expression under Section-2(i) of the said Regulation and under Section-3 of the said Regulation, with effect from and on the notified date, all the rights and interests of muttadar in the mutta, created under the sanad granted to him by the Government shall stand transferred to, and vest in the Government free from all encumbrances. The above-mentioned rights and interests are specified under the sanad granted to the muttadar by the Government. Under the proviso to Section-3 of the said Regulation, the Government shall not dispossess any person of any agricultural land in the mutta in respect of which the Government considers that such a person is prima facie entitled to a ryotwari patta under the Regulation.

Under Section-5 of the said Regulations, it is stipulated that every ryot in a mutta is entitled to a ryotwari patta in respect of all agricultural lands

held by him provided such lands are in his lawful possession for a continuous period of not less than one year immediately before the notified date.

Under Section-8 of the Regulation, the Settlement Officer shall make a proper enquiry regarding the claim for grant of a ryotwari patta and decide whether the applicant is entitled to ryotwari patta or not.

It is the case of the petitioner that the above-mentioned Tataiah set up the 1st respondent herein and made a claim for grant of patta under the above-mentioned Regulations and it is the further case of the petitioner that the 1st respondent is set up only as benami by the above-mentioned Tataiah though there is an assertion that the 1st respondent herein is the concubine of the above-mentioned Tataiah, the truth of which is neither enquired into nor are we concerned with in the present writ petitions. The fact remains that the 1st respondent did make an application claiming a patta over the disputed property before the Settlement Officer. The Settlement Officer granted a patta by his proceedings dated 23.06.1972 in favour of the 1st respondent. Aggrieved by the same, the petitioner herein preferred an appeal being Appeal No.55 of 1976 before the 3rd respondent herein. The said appeal was allowed by the 3rd respondent by his order dated 26.11.1979 remitting the matter back to the Settlement Officer to give an appropriate opportunity to both the petitioner and 1st respondent herein and take a final decision.

During the pendency of the above-mentioned appeal, it appears that proceedings were initiated against the 1st respondent and the above-mentioned Tataiah under the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Regulation I of 1959) (for short 'Land Transfer Regulation), obviously at the instance of the petitioner. In the said proceedings, the petitioner produced a copy of the deposition of Tataiah in a criminal case filed by the said Tataiah against the petitioner. During the trial of criminal case, the said Tataiah deposed that the land in question was taken by him pursuant to a possessory mortgage by the petitioner. The

authorities under the Land Transfer Regulation held that the 1st respondent herein is only a benami for the said Tataiah, and therefore the order dated 29th April, 1978 was passed directing eviction of both Tataiah and the 1st respondent herein. Aggrieved by the same, the said Tataiah and the 1st respondent herein unsuccessfully filed C.M.A.No.31 of 1978 on the file of Agent to the Government, East Godavari, Kakinada, by an order dated 10.02.1982 and that order became final. Pursuant to the confirmation of the eviction order in the above-mentioned appeal, the 1st respondent and Tataiah were dispossessed and the possession of the property was delivered to the petitioner on 07.03.1982.

In the meanwhile, pursuant to the remand order passed by the 3rd respondent herein dated 26.11.1979 referred to earlier, the Settlement Officer under Regulation No.2 of 1969 passed an order on 29.12.1980 by which he came to the conclusion that the 1st respondent herein is not entitled for a patta in terms of Regulation and the petitioner herein failed to establish his right to possession over the property. Aggrieved by the same, both the petitioner and the 1st respondent herein carried the matter in appeal before the Director of Settlements. While the appeal of the petitioner was kept pending without any decision for some time, the appeal preferred by the 1st respondent came to be decided on 24.02.1981 holding that the 1st respondent is entitled for a patta under the Muttas Abolition Regulations. Aggrieved by the said decision, the petitioner carried the matter in a further appeal to the 3rd respondent herein, which appeal came to be clubbed along with the appeal preferred by the petitioner before the Director of Settlements, which was obviously withdrawn by the 3rd respondent from the Director of Settlements. Both the matters came to be disposed of by an order dated 27.12.1994. In substance, it was held that the 1st respondent is not entitled to the grant of a patta under the Muttas Abolition Regulations and at the same time holding that the petitioner could not establish his right to the possession of the property in question. Hence, these two writ petitions

preferred by the petitioner and the 1st respondent respectively.

Learned counsel for the petitioner Sri MY.K.Rayudu argued that the decision of the 3rd respondent dated 27.12.1994 insofar as it held that the petitioner has not made out a case for possession of the property in question is unsustainable for the reason that such a decision or observation is beyond the scope of the appeal and consequentially without any jurisdiction. Learned counsel further argued that the issue before the Commissioner is limited to the question whether the 1st respondent is entitled to a patta under the Muttas Abolition Regulations or not and the rights of the petitioner are not the subject matter of the proceedings under the Muttas Abolition Regulations/Act, which finally culminated into the impugned order. Learned counsel further submitted that even otherwise, the conclusions reached by the 3rd respondent that the petitioner has not made out a case for his right to be in possession of the property in question is unsustainable in view of the decision of the authorities under the Scheduled Areas Land Transfer Regulation holding that the petitioner is entitled to possession of the property and the contra decision by the 3rd respondent is illegal.

Learned counsel for the 1st respondent Sri G.Krishna Murthy, on the other hand, submitted that notwithstanding the assertion of the petitioner that the 1st respondent is only a benamidar for the above-mentioned Tataiah, the case of the 1st respondent is that the property in question was gifted to her by the erstwhile Muttadhar of the above-mentioned Velagapalli Mutta, which stood abolished by virtue of the Muttas Abolition Act and by virtue of Section-5 of the Regulation, the

1st respondent is entitled to a ryotwari patta. Thus, the contention that the conclusion of the 3rd respondent would be contrary to the decision dated 27.12.1994 and is unsustainable.

Learned counsel further argued that in view of the declaration contained under Section-34 of the A.P. Muttas (Abolition and Conversion into

Ryotwari) Regulation, 1969 (Regulation 2 of 1969), the provisions of this Regulation override the provisions of the A.P. Scheduled Areas Land Transfer Regulation, 1959, and therefore, the decision reached by the authorities in the A.P. Scheduled Areas Land Transfer Regulation that the 1st respondent is not entitled to be in possession of the property is null and void and therefore has no affect on the rights of the 1st respondent under the A.P. Muttas (Abolition and Conversion into Ryotwari) Regulation.

The expression Mutta and Muttadar are defined under Section-2(g) & (h) of the Regulation 2 of 1969, which are as follows:

> "(2(g) – 'Mutta' means a village or group of villages held by a muttadar; or 'a sub-muttadar and includes a Mokhasa held by a Mokhasadar'.
>
> (h) - 'Muttadar' means a person who holds a mutta under a sanad granted by the Government subject to the payment of a fixed amount of land revenue to the Government and who assists the Government in maintaining law and order in the mutta and"

It is seen from the said definition that 'Mutta' is a village or group of villages 'held' by a muttadar. What is meant by the 'held' in the definition is requires a separate examination. Similarly, Muttadar is defined to mean a person who holds a mutta under a sanad granted by the Government subject to the payment of a fixed amount of land revenue and also who assists the Government in maintaining law and order in the mutta.

The expression 'held' occurring in the definition of expression 'Mutta' in my view requires an examination. Whether such holding under sanad grants any title to the Muttadar or only a right to collect the revenue from the ryots cultivating the land within the area of the Mutta are matters on which no material is placed before this Court. From the definition of the 'Muttadar' this Court can only infer that the nature of the holding of the Muttadar depends on the terms of the sanad granted by the Government and no information is available on record as to the terms of the sanad to the above-mentioned Muttadarini in the present case.

The language of Section-3 supports the inference drawn by me more tenable. The relevant portion of Section-3 (a) reads as follows:

> "3. Consequences of notification of mutta:-
>
> With effect on and from the notified date and save as otherwise expressly provided in this Regulation:--
>
> (a) all rights & interests of muttadar in the mutta, created under the sanad granted to him by the Government shall stand transferred to, and vest in the Government free from all encumbrances; and the Andhra Pradesh Revenue Recovery Act, 1864, the Andhra Pradesh (Andhra Area) Irrigation Cess Act, 1865 and all other enactments relating to rights in or over land and land revenue applicable to ryotwari areas shall apply to the mutta:"

Section-3 only speaks of the transfer and vesting in the Government of all rights and interests of the muttadar created under the sanad. It does not speak of any vesting of land which comprises within the mutta. In contrast, similar enactment like the Estates Abolition Act 1 of 1950 which specifically stipulates that the entire estate including the assets of the Zamindar estate and the permanent settlements of the estate and various other categories of the land enumerated therein shall stand transferred to the Government and vest in them. However, under Section-6 of the A.P. Muttas (Abolition and Conversion into Ryotwari) Regulation, 1969 specifies that the muttadar is entitled to a ryotwari patta in respect of the agricultural lands lawfully held by him in the mutta and which have been under direct cultivation of the muttadar. So, it is obvious from the scheme of Sections 3 and 6 of Regulation 2 of 1969 that the muttadar does not hold the entire land comprising within the mutta as the title-holder of such land. At any rate, nothing contrary is brought to my notice to establish that the muttadar holds title of the land comprising within the mutta.

In such a case, the validity of the alleged gift made in favour of the 1st respondent requires an examination from two aspects.

(1) whether the alleged gift is properly proved; and

(2) whether the Muttadarini had the right to gift the property in question to the 1st respondent herein;

Admittedly, in the present case the 1st respondent did not adduce any evidence regarding the factum of execution of the gift in her favour by the erstwhile muttadarini except producing an unregistered document purporting to be a gift deed allegedly executed by the erstwhile muttadarini in favour of the 1st respondent.

Coming to the question whetherMuttadari had the right to gift the property in favour of the 1st respondent, no material is brought on record or no submission is made before me to establish that the Muttadari had the right to gift the property.

Learned counsel for the petitioner relied on a proceeding dated 23.6.1972 of the Settlement Officer by which a patta is granted to the respondent. The order reads as follows :

> "Having enquired into the case and after perusal of the relevant records and considering the evidence produced before me it is hereby ordered that Smt.Thurram Nagaratnam it entitled under Section 8 of the Andhra Pradesh Regulation 2/1969 for a ryotwari patta for the lands shown in the Schedule.
>
> Sd/-
> Special Officer (Settlement Officer
> to Government Muttadar and
> Mulguzar Abolition : Rajahmundry.
>
> -
>
> **Schedule**
>
> District : East Godavari Mutta : Velagapalli
> Taluk : Rampachodavaram Village : Domanapalli
>
> ---
>
Name	Survey No. & Sub-Division No.	Extent H.A.	Remarks
Smt.Thurram Nagaratnam D/o Ramannadora,	8	4.80	
	9	6.60	(part

exclu-
China Ramanayyapeta, ding the extent
Rampachodavaram covered by channel)

Sd/-
Special Tahsildar,
Muttadri Abolition,
Rajahmundry

Compared and attested

//TRUE COPY//"

and the said order is the subject matter of appeal eventually before the 3rd respondent and the appellate order of the 3rd respondent is the impugned proceeding in these two writ petitions. The order dated 23.6.1972 is an order purporting to be an order under Section 8 of the Andhra pradesh Muttas (Abolition and Conversion into Ryotwari) Regulation, 1969. Section 8 reads as follows :

> **"8. Determination of lands in which a ryotwari patta is claimed :-**
>
> The Settlement Officer shall enquire into the nature and history of all lands in respect of which a ryotwari patta is claimed under Section 5 or Section 6 as the case may be, and decide in respect of which lands the claim should be allowed and the persons who are entitled to ryotwari patta."

It mandates the Settlement Officer to make an enquiry into the nature and history of all the lands in respect of which a ryotwari patta is claimed under Section 5 or Section 6, the relevant in the case on hand being Section 5 and decide the tenability of the claim. Obviously the nature of the enquiry under Section 8 is a quasi judicial. The order dated 23.6.1972 by any standard known to judicial scrutiny in my opinion can be called an order passed in exercise of a quasi judicial function, but wholly bereft of any reasons in support of the conclusion. Its more in the nature of a `sanad'. Apart from that, under section 5 of the above mentioned Regulation for a ryot to successfully claim a ryotwari patta, he must establish (1) the land for which patta is sought is an agricultural land held by the claimant (2) that the

claimant had been in lawful possession of the same for a continuous period of not less than one year immediately before the notified dated and (3) no other person is entitled to a ryotwari patta with respect to the same piece of land under the above mentioned regulation. No finding regarding any one of the above mentioned three aspects is to be found in the proceedings dated 23.6.1972. Coming to the appellate order of the 3rd respondent, he recorded a categoric finding that the alleged gift deed in favour of the 1st respondent herein contains an interpolation by which the name of the 1st respondent was subsequently added in the document. The relevant portion of the order reads as follows :

> "… A perusal of the Ex.R1 discloses that the name of Turram Nagaratnam i.e., the 2nd appellant has been interpolated to circumvent the provisions of the Land Transfer Regulation of the Act I of 1917. It can be construed that Ex.R1 was executed by the Muttadarini is in favour of Mutyala Tatayya a non-tribal and therefore that the Transfer under Ex.R1 in also void under Act I of 1917. The 2nd appellant i.e., Turram Nagaratnam has deposed in her statement dt. 12.9.77 before the Special Deputy Collector, Tribal Welfare that she is residing in the house of Mutyala Tatayya i.e., the 1st appellant herein. From the above it can be construed that the 1st appellant has set up the 2nd appellant to circumvent the provisions of Act I of 1917."

In substance, the 3rd respondent found that the gift deed is not a reliable document, a finding of fact with which I do not see any reason to interfere with.

Learned counsel for the 1st respondent relied upon two judgments of the High Court in **J.SAMBA MURTHY V/s. AGENT TO THE GOVT.**[1] and **SADANAPALLI RAMACHANDRA V/s. THE SPECIAL DEPUTY COLLECTOR, (TRIBAL WELFARE), PALWANCHA, DISTRICT KHAMMAM**[2] in support of his submission that in view of the declaration under Section 34 of the Muttas Abolition Regulation, the decision of the Settlement Officer should prevail over the decision of the competent

authority under the Scheduled Areas Land Transfer Regulation. I do not propose to discuss these two decisions at length for the reason (1) that the decision of the Settlement Officer under the Muttas Abolition Regulation which attained finality only prevails over the decision of the competent authority under the Land Transfer Regulation. In fact, later of the two judgments at para 7 says so. It is the very decision of the Settlement Officer which is in question in these writ petitions and therefore the decisions relied upon by the learned counsel for the respondent do not in any way strengthen the case of the respondent.

For the above mentioned reasons, I am of the opinion that the 3rd respondent rightly rejected the claim of the 1st respondent herein for grant of a patta under Muttas Abolition Regulation, 1969. But, at the same time, I must also record that the 3rd respondent went beyond the jurisdiction in confirming the order of the Settlement Officer, failed to exercise the jurisdiction vested in him in not setting aside that the petitioner herein is also not entitled for any claim over the land in question. Admittedly, the petitioner never made an application for grant of patta. No right of the petitioner ever fell for the adjudication before either the Settlement Officer or the 3rd respondent. The petitioner is admittedly in possession of the property pursuant to an order of the Competent Authority under the Land Transfer Regulation. Whether he is entitled for a ryotwari patta either under the Muttas Abolition Regulation or some other law is not a matter, which is required to be decided while adjudicating the claim of the 1st respondent.

In the circumstances, WP No.11824 of 1995 is allowed and WP No.16188 of 1996 is dismissed.

J.CHELAMESWAR,J

2ND AUGUST, 2006
PGS/KNK

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THE HON'BLE MR JUSTICE
J.CHELAMESWAR

WRIT PETITION NOs.11824 OF 1995
AND 16188 OF 1996

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2ND AUGUST, 2006

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[1] 1983 (2) (HC) APLJ 96

[2] 1978(2) 9HC) APLJ 244